

REMARKS

Applicants submit this Amendment in reply to the Office Action mailed September 22, 2005. In the Office Action, claims 1-12, 16-19, 23-26, 30-33, 37, and 39 were rejected under 35 U.S.C. § 112, second paragraph, and claims 1-12, 16-19, 23-26, 30-33, 37, and 39 were rejected under 35 U.S.C. § 101.

By this Amendment, Applicants amend claims 1-10, 12, 16-19, 23-26, 37, and 39; cancel claims 30-33; and add new claims 41 and 42. Accordingly, claims 1-29 and 34-42 are pending in this application, although claims 13-15, 20-22, 27-29, 34-36, 38, and 40 have been withdrawn. The originally-filed specification, drawings, and claims fully support the subject matter of amended claims 1, 4-9, 16, 23, 30, 37, and 39. Thus, this Amendment introduces no new matter.

I. Rejections Under 35 U.S.C. § 112, Second Paragraph

The Examiner asserts claims 1-12, 16-19, 23-26, 30-33, 37, and 39 are indefinite. Applicants disagree. 35 U.S.C. § 112 is not a tool for the Examiner to use to force Applicants to define terms recited in the claims. However, to expedite prosecution of this application, Applicants amend claims 1-10, 12, 16-19, 23-26, 37, and 39. These claims clearly recite method steps and/or elements that are supported by the disclosure of Applicants' invention. Therefore, because claims 1-10, 12, 16-19, 23-26, 37 are definite, Applicants request the rejections under 35 U.S.C. § 112, second paragraph be withdrawn, and the claims allowed.

II. Rejections Under 35 U.S.C. § 101

The Examiner rejects claims 1-12, 16-19, 23-26, 37, and 39 as being directed towards non-statutory subject matter because the claims are not in the “technological arts.” (Office Action at 5.) In alleging non-statutory subject matter, however, the Examiner relies solely on an analysis which is improper according to the interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility (“Guidelines”), issues by the U.S. Patent and Trademark Office on October 26, 2005. As noted in Annex III of the Guidelines, “United States patent law does not support the application of a ‘technical aspect’ or ‘technological arts’ requirement.” (Guidelines at Annex III, page 42.) As such, the Guidelines states, “USPTO personnel should no longer rely on the technological arts test to determine whether a claimed invention is directed to statutory subject matter.” (Guidelines at Annex III, page 45.) Accordingly, because the Examiner has relied on the technological arts test to assert claims 1-12, 16-19, 23-26, 37, and 39 are directed toward non-statutory subject matter, the rejection of these claims under 35 U.S.C. § 101 is procedurally deficient. Therefore, for at least this reason, Applicants request that the rejection be withdrawn, and the claims allowed.

Applicants note that the Examiner did not examine in view of the prior art. However, the Guidelines require the Examiner to determine whether the claimed invention complies with 35 U.S.C. § 102 and 103, even if a 35 U.S.C. §101 reject may apply. (Guidelines at Annex I, pages 30-31.)

III. Conclusion

In view of the foregoing remarks, Applicants submit that the pending claims 1-29 and 34-42 are directed toward statutory subject matter and particularly point out and

distinctly claim embodiments of Applicants' invention. Applicants therefore request withdrawal of the rejections and timely allowance of all pending claims.

The Office Action contains characterizations of the claims and the related art with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

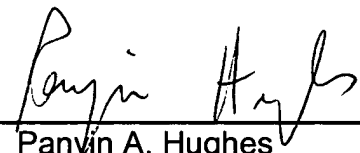
In discussing the specification, claims, and drawings in this Amendment, it is to be understood that Applicants are in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification or abstract and/or shown in the drawings. Rather, Applicants are entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

Please grant any extensions of time required to enter this Amendment and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: January 23, 2006

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